IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:-

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

FRIDAY, THE 23RD MARCH 2007 / 2ND CHAITHRA 1929

INSURANCE APPEAL No.14 of 2004

E.I.C.NO.15/1999 OF THE EMPLOYEES' INSURANCE COURT, KOZHIKODE

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APPELLANT/APPLICANT:-

M/S. AYNA SILKS,
REPRESENTED BY ITS MANAGING PARTNER,
T.ENMOZ, S.M. STREET, CALICUT 673 001.

BY ADV. SRI.M.ASOKAN
SRI.DEVAPRASANTH.P.J.

RESPONDENT/RESPONDENT:-

THE REGIONAL DIRECTOR, E.S.I.CORPORATION,
THRISSUR.

BY ADV. SRI.P.SANKARANKUTTY NAIR
SRI.T.V.AJAYKUMAR.

THIS INSURANCE APPEAL HAVING BEEN FINALLY HEARD ON 23/03/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:-

K.Padmanabhan Nair,J.

Insurance Appeal No.14 of 2004

Dated, this the 23rd day of March, 2007

JUDGMENT

The applicant in E.I.C.No.15 of 1999 on the file of Employees' Insurance Court, Kozhikode is the appellant. The appeal is filed against an order passed by the E.I.Court holding that M/s.Ayna Silks and M/s.Ayna Readymades have functional integrality and they can be clubbed together and treated as a single establishment so as to come under the Employees' State Insurance Act.

2. The case of the appellant is that their establishment is a firm constituted under the Indian Partnership Act and engaged in the business of selling of textiles. The specific case put forward by the appellant is that the appellant is not dealing in readymade garments and that was registered as a separate establishment under the Kerala Shops and Commercial Establishments Act and both establishments were maintaining separate registers and documents as per the provisions of the said Act. It was specifically contended that the appellant firm

never engaged 20 or more persons and hence not liable to pay contribution. The stand taken by the respondent was that there is yet another establishment by name M/s.Ayna Readymades functioning in the very same building and they are to be clubbed together. It is true that both establishments have independent registration under the Shops Act, independent Sales Tax and Income Tax registrations and they are employing their own set of workers. The Court below considered the voluminous evidence adduced by both sides. It was held that there is unity of purpose between the two establishments. It was also found that M/s.Ayna Silks was located in the Ground Floor and M/s.Ayna Readymades on the upstair portion. Therefore, there was geographical unity. Unity of ownership was also established. It was found that no rent was paid by M/s.Ayna Readymades for the building occupied by it. P.W.1 had deposed that the rent paid by Ayna Sliks may be inclusive of the rent due from Ayna Readymades. Excepting these two shops, there were no other shops in the building. Counsel for the appellant strenuously argued before me that there are a number of tests which would show that these two are independent establishments. It is contended that when one of

the establishments was closed, the other establishment was working for another two years. But, by the fact that even after the closure of one establishment the other establishment functioned, it is clear that there is commonality. The facts such as geographical unity, common passage, common locking arrangement, etc. were taken into account and the Insurance Court came to the conclusion that those establishments constitute one and the same and hence liable to be clubbed together and liable to be covered under the E.S.I. Act. It is a finding of fact based on good evidence. There is no scope for interference in this appeal and the same is only to be dismissed.

In the result, the appeal is dismissed. I.A.No.772 of 2004 also shall stand dismissed.

K.Padmanabhan Nair
Judge

vku/-